

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

**GTCR BC HOLDINGS, LLC and
SURMODICS, INC.,**

Defendants.

Case No. 1:25-cv-02391

Hon. Jeffrey I. Cummings

JOINT INITIAL STATUS REPORT FOR NEW CASE

Pursuant to Federal Rule of Civil Procedure 26(f) and this Court’s order (ECF No. 36), Plaintiff Federal Trade Commission (“FTC”) has met and conferred with Defendants GTCR BC Holdings, LLC (“BC Holdings”) and Surmodics, Inc. (collectively, “Defendants”). The parties hereby present their Joint Initial Status Report.

I. The Nature of the Case.

A. Attorneys of record, and lead trial counsel, for each party.

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B. Nature of the asserted claims and any counterclaims or third-party claims.

In an administrative proceeding, the FTC challenged BC Holdings's proposed acquisition of Surmodics, Inc. (the "Acquisition") under Sections 7 and 11 of the Clayton Act, 15 U.S.C. §§ 18, 21, and Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC seeks a preliminary injunction from this Court under Section 13(b) of the Federal Trade Commission Act to prevent the closing of the Acquisition during the pendency of the administrative proceeding. Defendants intend to counterclaim that the FTC cannot pursue its administrative proceeding because it violates the U.S. Constitution.

C. Major legal and factual issues.

The FTC's claim asks the Court to determine whether the FTC has made a proper showing that, weighing the equities and considering the FTC's likelihood of ultimate success, granting a preliminary injunction would be in the public interest. The Defendants' proposed counterclaims would ask the Court to decide whether the FTC's administrative process violates the U.S. Constitution.

Major disputed factual issues that are likely to arise in the case include the definition of a relevant product market and relevant geographic market, and other facts that will help the Court determine whether the Acquisition may substantially lessen competition.

D. Relief sought.

FTC: Preliminary injunction to preserve the status quo and prevent the Acquisition from closing pending the administrative proceeding.

Defendants: Defendants intend to file claims seeking declaratory and injunctive relief precluding the administrative proceeding.

II. Jurisdiction.

A. Federal Question Jurisdiction. This Court's jurisdiction arises under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), and under 28 U.S.C. §§ 1331, 1337, and 1345.

III. Status of Service. All Defendants have been served.

IV. Motions.

A. Pending Motions. There are no pending substantive motions for the Court to address. Motions by counsel seeking leave to appear *pro hac vice* are pending before the Court. *See ECF Nos. 5-6, 23-25, 28-29, and 39-41.*

B. Response to the Complaint. Defendants will answer the Complaint by March 27, 2025. With respect to Defendants' counterclaims, under Federal Rule of Civil Procedure 12(a)(2), an answer or response is due 60 days after service of the counterclaims.

V. Case Plan.

A. Discovery Plan. In brief, the parties anticipate written fact discovery, document production (including ESI), fact depositions, and expert discovery (including depositions). The parties propose initial discovery deadlines herein based on a proposed Hearing on Plaintiff's motion for a preliminary injunction beginning on July 23, 2025. The parties do not anticipate filing amended pleadings. The parties continue to negotiate a comprehensive Case Management and Scheduling Order ("CMSO") and will present that schedule and proposed order to the Court promptly.

With respect to Defendants' constitutional counterclaims, Defendants intend to move to suspend the deadlines in the administrative proceeding and to continue the administrative hearing currently set for August 6, 2025. A proper schedule for discovery and briefing on the counterclaims depends on the outcome of those motions. The parties will alert the Court regarding a proposed schedule for briefing Defendants' counterclaims at an appropriate time.

B. Rule 26(a)(1) Disclosures. The parties agree to forego the requirement to exchange initial disclosures pursuant to Federal Rule of Civil Procedure 26(a)(1).

C. Fact Discovery. Discovery will commence when the FTC transfers its investigative file to Defendants. The parties anticipate discovery will close on June 13, 2025.

D. Expert Discovery. The Parties anticipate expert discovery and propose the following schedule:

a. Plaintiff's initial expert report(s) due on June 13, 2025.

b. Defendants' initial expert report(s) due on July 3, 2025.

c. Plaintiff's rebuttal report(s) due on July 14, 2025.

d. Close of expert discovery on July 18, 2025.

E. Preliminary Injunction Briefing Schedule.

- a. Plaintiff's Motion for Preliminary Injunction due on June 18, 2025.
- b. Defendants' Opposition due on July 7, 2025.
- c. Plaintiff's Reply due on July 18, 2025.

F. Trial. The parties do not request a jury trial. The parties propose a hearing length of 48 hours.

VI. Consent and Settlement Discussions:

A. Consent. All counsel have advised the parties that they may proceed before a Magistrate Judge. The parties do not consent to proceed before a Magistrate Judge.

B. Settlement Discussions. There have been no settlement discussions conducted and the parties do not mutually request a settlement conference at this time.

Dated: March 18, 2025

Respectfully submitted,

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